

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT NIEVES,

Plaintiff,

-against-

9:07-CV-0003
(LEK/GHL)

SUSAN MUELLER, Physician,
Wallkill Correctional Facility

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on September 26, 2008, by the Honorable George H. Lowe, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 24).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Judge Lowe's Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 24) is **APPROVED** and
ADOPTED in its **ENTIRETY**; and it is further

ORDERED, that Defendant's Motion to dismiss Plaintiff's Complaint for failure to

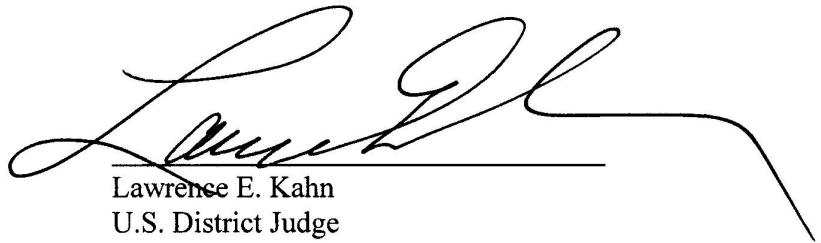
prosecute pursuant to FED. R. CIV. P. 41(b), or, in the alternative, her Motion for judgment on the pleadings pursuant to FED. R. CIV. P. 12(c) is **GRANTED**; and it is further

ORDERED, that Defendant's alternative Motion for an Order compelling Plaintiff to appear at his duly noticed deposition and provide Defendant with a medical authorization pursuant to FED. R. CIV. P. 37 is **DENIED** as moot; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: October 20, 2008
Albany, New York



Lawrence E. Kahn
U.S. District Judge